

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CASSIDY H.,

Plaintiff,

v.

ACTING COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 3:24-cv-05374-TLF

ORDER REVERSING AND  
REMANDING DEFENDANT'S  
DECISION TO DENY BENEFITS

Plaintiff filed this action pursuant to 42 U.S.C. § 405(g) for judicial review of defendant's denial of plaintiff's application for supplemental security income ("SSI") and child disability insurance benefits. Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local Rule MJR 13, the parties have consented to the jurisdiction of a Magistrate Judge. Dkt. 2. Plaintiff challenges the Administrative Law Judge's ("ALJ") decision finding that plaintiff was not disabled. Dkt. 4, Complaint.

On March 15, 2021 plaintiff filed applications for SSI and child disability benefits alleging a disability onset date of January 2, 2005. AR 208-14, 215-221. The applications were denied initially and upon reconsideration. AR 107-10, 111-15, 116-20, 123-25, 126-28. She later amended the onset date to March 1, 2019. AR312. On April 19, 2023 a hearing was held in front of ALJ David Johnson. AR 38-68. On June 20, 2023 ALJ Johnson issued an unfavorable decision finding plaintiff not to be disabled.

1 AR 16-37. The Appeals Council denied the request for review and plaintiff initiated this  
2 action.

3 The ALJ found plaintiff had the following severe impairments: obesity, diabetes,  
4 anxiety disorder, and post-traumatic stress disorder (PTSD). AR 22. The ALJ  
5 determined plaintiff had the residual functional capacity ("RFC") to perform light work, as  
6 denied in 20 CFR 404.1567(b) and 416.967(b) with the additional restrictions:

7 that does not require standing or walking more than 2 hours total in a workday,  
8 that does not require climbing of ladders, ropes, or scaffolds, that does not  
9 require more than occasional balancing, stooping, kneeling, crouching, crawling,  
10 or climbing of ramps or stairs, that does not require exposure to hazards, and  
11 that does not require more than occasional, superficial interaction (such as "good  
12 morning" or "here is the item").

13 AR 24. The ALJ found plaintiff could perform the following occupations: Marker (DOT  
14 209.587-034), Small Products Assembler II (DOT 739.687-030), and Electronics worker  
15 (DOT 726.687-010). AR 30.

### 16 STANDARD

17 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's  
18 denial of Social Security benefits if the ALJ's findings are based on legal error or not  
19 supported by substantial evidence in the record as a whole. *Revels v. Berryhill*, 874  
20 F.3d 648, 654 (9th Cir. 2017) (internal citations omitted). Substantial evidence is "such  
21 relevant evidence as a reasonable mind might accept as adequate to support a  
22 conclusion." *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations  
23 omitted). The Court must consider the administrative record as a whole. *Garrison v.*  
24 *Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014). The Court also must weigh both the  
25 evidence that supports and evidence that does not support the ALJ's conclusion. *Id.*  
The Court may not affirm the decision of the ALJ for a reason upon which the ALJ did

not rely. *Id.* Rather, only the reasons identified by the ALJ are considered in the scope of the Court's review. *Id.*

## DISCUSSION

### 1. Medical evidence.

Plaintiff challenges the ALJ's evaluations of the opinions of Dr. Tasmyn Bowes, Psy.D., Dr. William Wilkinson, Ed.D., Christine Hong, PAC, Lynette McLagan, PA-C, and the non-examiners. Dkt. 12, opening brief, at 2-8.

Plaintiff filed the claim on March 15, 2021, so the ALJ applied the 2017 regulations. See AR 208. Under the 2017 regulations, the Commissioner "will not defer or give any specific evidentiary weight . . . to any medical opinion(s) . . . including those from [the claimant's] medical sources." 20 C.F.R. §§ 404.1520c(a), 416.920c(a). The ALJ must nonetheless explain with specificity how he or she considered the factors of supportability and consistency in evaluating the medical opinions. 20 C.F.R. §§ 404.1520c(a)–(b), 416.920c(a)–(b).

In *Woods v. Kijakazi*, 32 F.4th 785 (9th Cir. 2022), the Ninth Circuit found that under the 2017 regulations,

an ALJ cannot reject an examining or treating doctor's opinion as unsupported or inconsistent without providing an explanation supported by substantial evidence. The agency must "articulate ... how persuasive" it finds "all of the medical opinions" from each doctor or other source, 20 C.F.R. § 404.1520c(b), and "explain how [it] considered the supportability and consistency factors" in reaching these findings, *id.* § 404.1520c(b)(2). *Id.*

A. Dr. Tasmyn Bowes, Psy.D.

Plaintiff argues that the ALJ erred by failing to evaluate Dr. Bowes' opinion. Dkt. 12 at 2-3.

1 On September 30, 2015 Dr. Bowes completed a psychological/ psychiatric  
2 evaluation of plaintiff. AR 390-94. She identified “severe” limitations in plaintiff’s ability to  
3 “complete a normal work day and work week without interruptions from psychologically  
4 based symptoms,” marked limitations in plaintiff’s ability to “understand, remember, and  
5 persist in tasks by following detailed instruction,” “make simple work-related decisions,”  
6 “ask simple questions or request assistance,” “communicate and perform effectively in a  
7 work setting,” and “maintain appropriate behavior in a work setting.” AR 393-94. Dr.  
8 Bowes also evaluated other basic work activities as moderate or none or mild. *Id.* The  
9 ALJ did not address this opinion, but he noted that this opinion was a part of plaintiff’s  
10 prior application, “[t]he only evidence in the current file from the period prior to attaining  
11 age 22 is from September of 2015. This evidence is not new, as it was in the prior file.”  
12 AR 19.

13 Plaintiff argues that it was legal error for the ALJ to not evaluate this opinion  
14 because it provides a longitudinal perspective of the longstanding nature of plaintiff’s  
15 symptoms and limitations. Dkt. 12 at 3.

16 The Commissioner argues that Dr. Bowes’ opinion did not require further  
17 discussion by the ALJ because it predated the relevant period by more than five years,  
18 making it particularly remote. Dkt. 14 at 8. The Commissioner argues the issue in this  
19 case is similar to the one presented in *Fair v. Bowen*, 885 F.2d 597, 600 (9th Cir. 1989).

20 The Ninth Circuit has held that opinions that predate the relevant period are of  
21 limited relevance. *Carmickle v. Comm’r of Soc. Sec.*, 533 F.3d 1155, 1165 (9th Cir.  
22 2008). It has also determined that the relevancy of these opinions is only related to  
23 determining whether a condition has worsened. *Fair*, 885 F.2d at 600.

1 Yet the ALJ did not rely on this reason for rejecting the opinion. *See, e.g., Pinto*  
2 *v. Massanari*, 249 F.3d 840, 847 (9th Cir. 2001) (The Court cannot affirm an ALJ's  
3 decision on a ground that the agency did not invoke in making its decision) (internal  
4 citations omitted). Here the ALJ only mentioned the opinion in the determination of  
5 whether there was good cause to re-open the previous decision. AR 19.

6 The ALJ "need not discuss all evidence presented" *Vincent on Behalf of Vincent*  
7 *v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation omitted) (emphasis in  
8 original). The ALJ must only explain why "significant probative evidence has been  
9 rejected." *Id.*

10 Dr. Bowes' opinion constitutes significant, probative evidence that the ALJ was  
11 required to consider; it addresses mental health concerns that the ALJ determined to be  
12 severe at the time of his decision.

13 The ALJ erred in not considering this opinion. Additionally, the error was not  
14 harmless. An error that is inconsequential to the non-disability determination is  
15 harmless. *Stout v. v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006)). If  
16 the errors of the ALJ result in a residual functional capacity (RFC) that does not include  
17 relevant work-related limitations, the RFC is deficient and the error is not harmless. *Id.*;  
18 *see also, Carmickle* 533 F.3d at 1160; *Embrey v. Bowen*, 849 F.2d 418, 422-423 (9th  
19 Cir. 1988); *Stramol-Spirz v. Saul*, 848 Fed. Appx. 715, 718 (9th Cir. 2021)  
20 (unpublished).

21 Dr. Bowes' opined significant limitations in basic work activities that were not  
22 included in the RFC. Therefore, the error was not harmless.

23 B. Dr. William Wilkinson, Ed.D.  
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1 Plaintiff argues that the ALJ erred in discounting Dr. Wilkinson's opinion. Dkt. 12  
2 at 3-4.

3 On April 5, 2023 Dr. Wilkinson completed a psychological/ psychiatric evaluation.  
4 AR 1544-48. He diagnosed generalized anxiety disorder, panic disorder, unspecified  
5 anxiety disorder (features of PTSD), major depressive disorder, recurrent, moderate to  
6 marked currently, personality disorder (some features of cluster B and C). AR 1545. He  
7 opined that she had severe limitations in several basic work activities including:  
8 "perform activities within a schedule, maintain regular attendance, and be punctual  
9 within customary tolerances without special supervision," "maintain behavior in a work  
10 setting," and "complete a normal work day and work week without interruptions from  
11 psychologically based symptoms." AR 1546. He opined she would have a moderate or  
12 none or mild limitation in every other basic work activity. *Id.* He assigned an overall  
13 severity rating of severe. *Id.*

14 The ALJ found this opinion to be not persuasive on the basis that his own exam  
15 did not support his findings, it was inconsistent with a lack of such issues in mental and  
16 physical health treatment notes, and it was inconsistent with the examination by PA-C  
17 McLagan. AR 28.

18 Plaintiff argues that the ALJ erred in finding Dr. Wilkinson's opinion to be contrary  
19 to his own exam because Dr. Wilkinson described clinical findings that supported the  
20 opined limitations. Dkt. 12 at 4. She also argues that Dr. Wilkinson's opinion is  
21 consistent with notes from her treating psychiatrist. *Id.*

22 As for the ALJ's first reason, the ALJ may reject an opinion for internal  
23 inconsistency. *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001). Yet the ALJ  
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1 must consider the context of the opinion in the record, including observation and  
2 treatment notes. *Burrell v. Colvin*, 775 F.3d 1133, 1140 (9th Cir. 2014).

3 The ALJ noted that Dr. Wilkinson's opinion was inconsistent with the exam in the  
4 following ways,

5 [t]he exam showed "evidence of personal care" and appropriate appearance, as  
6 well as good eye contact and participation in the session. She was responsive to  
7 being asked to speak up, and was noted to be a good verbalizer with logical,  
8 goal-directed-speech. She was cooperative and, although tentative at times, she  
9 readily persisted at her part in the evaluations. He noted her mood was reported  
10 as ok with a lot of anxiety helped by medications, and an affect congruent with  
11 her mood. All other signs observed, including concentration were within normal  
12 limits.

13 AR 28.

14 The ALJ's decision does not describe any inconsistencies between the  
15 observations cited by the ALJ and the limitations opined by Dr. Wilkinson such as  
16 performing activities within a schedule, maintaining regular attendance, being punctual  
17 within customary tolerances, and completing a normal work week or work day without  
18 interruptions from psychologically based symptoms. When an ALJ seeks to discredit a  
19 medical opinion, they must explain why their own interpretations, rather than those of  
20 the doctors are correct. *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing  
21 *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)) The ALJ did not explain and  
22 the Court is unable to discern how the cited portions of the exam were inconsistent with  
23 the opined limitations and therefore this reason is not supported by substantial  
24 evidence.

25 As for the ALJ's second reason, consistency with the record is an important  
factor in assessing the weight to give a medical opinion, yet mental examinations must

1 be considered in the context of the overall record. *Ghanim v. Colvin*, 763 F.3d 1154,  
2 1161 (9th Cir. 2014).

3 Earlier in the opinion, the ALJ cited

4 normal observations like neat appearance, adequate hygiene, appropriate dress  
5 and grooming, behavior appropriate to circumstance, cooperative behavior,  
6 normal eye contact, a good account of her situation, clear and developmentally  
7 appropriate speech, alert, oriented, intellectually average appearance, euthymic,  
8 calm, and/or mood, congruent affect, fair/good insight and judgment, appropriate  
9 thought content, and goal-directed, coherent, and logical thought and  
10 perceptual process.

11 AR 26 (citing AR 572, 575, 579, 582-591, 1526, 1529, 1532, 1535, 1539, 1558, 1561,  
12 1567-1629). But, Dr. Wilkinson's opinions about plaintiff's limitations were specific to the  
13 context of plaintiff's ability to effectively complete work activities within a given workday.  
14 In contrast, the cited evidence is from plaintiff's medical appointments, where conditions  
15 are not analogous to those of a competitive working environment.

16 And, the record does not support the ALJ's conclusion. The progress reports  
17 from treatment providers show plaintiff was at times noted to have a "depressed/anxious  
18 mood" or "irritable" mood. AR 534, 537, 588, 591. On November 3, 2020, a provider  
19 noted that she has chronic low self-esteem. AR 537. On January 5, 2021 she was noted  
20 to have fleeting thoughts of self harm although she had not made any plans or taken  
21 any steps toward harming herself. AR 534. On January 11, 2021 she described a fear of  
22 being around people because she is worried about snapping around them or being bad  
23 company. AR 590. On September 15, 2021 she reported being always isolated, with no  
24 friends. AR 571-72. On December 23, 2021 she reported suicidal ideation every day but  
25 no plans. AR 581. Her provider stated there was noteworthy decompensation to watch  
for. AR 832. Plaintiff continued to report fleeting thoughts of suicidal ideation throughout



1 2022. AR 1614, 1587, 1584, 1581. She frequently reported experiencing anxiety and  
2 depression, and often complained that these symptoms interfered with her sleep, to the  
3 point she did not sleep at all on some nights. AR 562, 571, 578, 590. On September 13,  
4 2021 she reported that her mood shifted suddenly many times throughout the day with  
5 no apparent trigger, and she experienced at least one crying spell a day. AR 1581.

6 Accordingly, this reason was not supported by substantial evidence.

7 As for the ALJ's third reason, as noted below, the ALJ erred in evaluating PA-C  
8 McLagan's opinion, therefore inconsistency with this opinion is not a valid basis for  
9 discrediting Dr. Wilkinson's opinion.

10 At the hearing, the Vocational Expert (VE) testified that an individual who  
11 exhibited inappropriate behavior such as distracting others and being off task for more  
12 than ten percent of the time would be subject to a three strike rule before they were  
13 terminated. AR 66-67. The VE testified that it would not be tolerated for an individual to  
14 be tardy for at least ten percent of the work week. AR 66. Therefore, had the ALJ  
15 included the limitations opined by Dr. Wilkinson it may have resulted in a more  
16 restrictive RFC. The error in evaluating his opinion was not harmless. *Stout v. v.*  
17 *Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006).

18 C. Christine Hong, PA-C<sup>1</sup>

19 Plaintiff argues the ALJ did not state any reason supported by substantial  
20 evidence for discounting the opinions of PA-C Hong. Dkt. 12 at 4-6.

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24 <sup>1</sup> The ALJ mistakenly refers to Christine Hong, PA-C as Irene Chege, PA-C. AR 28 (citing AR 446-56).

1 On October 3, 2021 PA-C Hong completed a physical disability evaluation. AR  
2 446-56. PA-C Hong noted that plaintiff was negative for all symptoms aside from  
3 psychiatric and gastrointestinal. AR 448.

4 PA-C Hong diagnosed plaintiff with morbid obesity, diabetes type II uncontrolled,  
5 and post-operative pain from cholecystectomy. AR 454. She completed a medical  
6 source statement and opined that plaintiff could stand/walk for two to four hours  
7 cumulative, one to two hours at a time, could sit for two to four hours cumulative, one to  
8 two hours at a time, could perform squatting/kneeling/climbing/crawling occasionally,  
9 from very little to one-third of the time, could perform balancing/climbing  
10 ladders/climbing stairs frequently, one-to-two thirds of the time, could use foot controls  
11 one-to-two thirds of the time, could lift/carry up to ten pounds occasionally, three to  
12 seven pounds frequently, and could push/pull from one-to-two thirds of the time. AR  
13 455. She opined plaintiff could continuously, or over two-thirds of the time, reach waist  
14 to shoulder, reach above shoulder, and grip/handle/finger/feel/manipulate. *Id.* She  
15 opined plaintiff had no temperature restrictions and could tolerate exposure to vibration,  
16 operation of a motor vehicle, unprotected heights, pulmonary irritants, dust, fumes, and  
17 humidity continuously, or over two-thirds of the time. *Id.*

18 The ALJ found this opinion to be generally persuasive on the basis that the  
19 opinion of a reduced exertion level was consistent with the longitudinal record, but, it  
20 was less persuasive than the opinions of the DDS examiners, and PA-C Hong provided  
21 little support for her opinion. AR 28-29.

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1 Plaintiff challenges the ALJ's reasons for partially rejecting PA-C Hong's opinion  
2 and argues that the ALJ erred by failing to include all of the limitations opined by PA-C  
3 Hong in the RFC. Dkt. 12 at 4-6.

4 As for the ALJ's first reason, a provider's familiarity with other evidence in the  
5 record is a factor an ALJ may consider, 20 C.F.R. §§ 404.1520(c)(5), 416.920(c)(5),  
6 however, here the ALJ did not identify evidence from the broader record that the ALJ  
7 found as undermining PA-C Hong's opinion. The ALJ references the discussion earlier  
8 in the opinion regarding the DDS medical consultants, yet the ALJ does not explain how  
9 the cited evidence, which shows an elevated BMI and fluctuations in blood sugar  
10 stability, undermines PA-C Hong's opined limitations. See AR 27 (citing 1182, 1258,  
11 1275, 1310, 1348, 1510, 1514, 1542).

12 Because the ALJ did not provide a basis for the conclusion that PA-C Hong's  
13 opinion is inconsistent with the longitudinal record and the Court cannot discern the  
14 reason, this was not a proper reason for discounting PA-C Hong's opinion. *Brown-*  
15 *Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (The Social Security Administration  
16 must set forth the reasoning behind its decision in a way that allows for meaningful  
17 review, and the ALJ must build an accurate and logical bridge from the evidence to his  
18 or her conclusions).

19 As for the ALJ's second reason, an ALJ need not accept a medical opinion "if  
20 that opinion is brief, conclusory, and inadequately supported by clinical findings." *Baston*  
21 *v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). Here the ALJ's  
22 conclusion appears to be based on PA-C Hong's reference to "diagnoses listed above"  
23 as reasoning for the opinion concerning several of the opined limitations in the medical  
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1 source statement. AR 454-55. But, PA-C Hong also stated that the opinions are based  
2 on “the information available today, including objective findings on the claimant’s exam  
3 as well as assessment of the natural history of the claimant’s medical/physical  
4 conditions.” AR 454. Additionally, PA-C Hong described many of her findings that  
5 support her opinion in the physical exam portion of the evaluation, including moderate  
6 difficulty getting off the exam table, and a reduced range of motion in all directions (less  
7 than 25% of the normal range) in her lumbar spine and hips. AR 448-54.

8 The ALJ also noted that PA-C Hong’s opinion appeared to heavily rely on  
9 plaintiff’s symptoms. AR 28. If a medical source’s opinions are based “to a large extent”  
10 on an applicant’s self-reports and not on clinical evidence, and the ALJ finds the  
11 applicant not credible, the ALJ may discount the source’s opinion. *Tommasetti v.*  
12 *Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008); see also *Bayliss v. Barnhart*, 427 F.3d  
13 1211, 1217 (9th Cir. 2005). But, when an opinion is not more heavily based on a  
14 patient’s self-reports than on clinical observations, there is no evidentiary basis for  
15 rejecting the opinion. See *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1199-1200 (9th  
16 Cir. 2008).

17 Specifically, the ALJ cited PA-C Hong’s exam findings that showed “some  
18 reduced lumbar spine and hip range of motion and hip/leg strength, but otherwise  
19 normal findings, including intact sensation, other normal range of motion and strength,  
20 and steady, non-antalgic gait.” AR 28-29. The medical source statement appears to  
21 reflect the less severe findings from the exam -- poor to fair function in categories  
22 involving plaintiff’s lower body, and good to excellent function in areas involving her  
23 upper body such as reaching and gripping/handling/fingering/feeling/manipulation. AR  
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1 454-55. Therefore, the record does not support the ALJ's conclusion that PA-C Hong's  
2 opinion was based more heavily on plaintiff's self reports than on the clinical  
3 observations.

4 Accordingly, the ALJ failed to provide proper reasons to discount PA-C Hong's  
5 opinion.

6 PA-C Hong opined more severe exertional levels with reduced standing/walking  
7 and postural activities than the ALJ provided for in the RFC. Had the ALJ included these  
8 limitations it may have resulted in a more restricted RFC. Thus the error in evaluating  
9 this opinion was not harmless. *Stout v. v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050,  
10 1054 (9th Cir. 2006).

11 D. Lynette McLagan, PA-C

12 Plaintiff argues that the ALJ erroneously found PA-C McLagan's opinion to be  
13 generally persuasive. Dkt. 12 at 6.

14 On October 15, 2021 PA-C McLagan completed a psychiatric disability  
15 evaluation. AR 458-466. She conducted a mental status examination and opined that  
16 plaintiff was not malingering. AR 464. She opined that plaintiff's prognosis was fair if  
17 optimal treatment over the next twelve months consisting of medication management  
18 and psychotherapy. AR 464-65. She diagnosed plaintiff with unspecified anxiety  
19 disorder with panic and post traumatic stress disorder. AR 464. She completed a  
20 medical source statement and opined that plaintiff is able to manage funds, understand,  
21 remember, and carry out simple instructions, understand, remember, and carry out  
22 complex instructions, sustain concentration and persist in work-related activity at a  
23 reasonable pace including regular attendance at work and completing work without  
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1 interruption, and interact with coworkers and superiors and the public and adapt to the  
2 usual stresses encountered in the workplace. AR 465.

3 The ALJ found PA-C McLagan's opinion generally persuasive. AR 29. He found  
4 the opinion of no significant limitations was supported by the longitudinal record,  
5 however, some interaction restriction, as opined by the DDS opinion, was appropriate.  
6 AR 29. He determined that the DDS doctors were more persuasive because they had  
7 the advantage of a longitudinal perspective. *Id.*

8 Plaintiff argues the ALJ erred in finding PA-C McLagan's opinion to be generally  
9 persuasive because it was inconsistent with her own findings, and the opinions of Dr.  
10 Bowes and Dr. Wilkinson, and therefore was lacking in both consistency and  
11 supportability. Dkt. 12 at 6. However, plaintiff does not explain how PA-C McLagan's  
12 opinion was inconsistent with her own findings outside of quoting portions of PA-C  
13 McLagan's notes. Importantly, this does not address the explanations PA-C McLagan  
14 provided for each residual function such as "history/interview, mental status exam,  
15 performance on intellectual functioning portion of exam, easily followed more complex  
16 interview questions." AR 465. The ALJ did not err in finding PA-C McLagan's opinion to  
17 be persuasive on this basis.

18 As for the ALJ's first reason for finding PA-C McLagan's opinion persuasive, the  
19 ALJ's decision refers to the portions of medical records (as discussed above, in the  
20 analysis of the ALJ's evaluation of the persuasiveness of Dr. Wilkinson's opinion). An  
21 ALJ may not "cherry-pick" evidence from the record to support their findings. See  
22 *Holohan v. Massanari*, 246 F.3d 1195, 1207 (9th Cir. 2001) (finding that the ALJ erred  
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1 by selectively picking some entries in the record while ignoring others). Accordingly, this  
2 reason is not supported by substantial evidence.

3 Therefore, the ALJ erred in assessing the persuasiveness of this opinion. PA-C  
4 McLagan opined no significant limitations in mental work activities. Had the ALJ not  
5 accepted this evaluation it may have resulted in a more restrictive RFC. Thus the error  
6 in evaluating this opinion was not harmless. *Stout v. v. Comm’r, Soc. Sec. Admin.*, 454  
7 F.3d 1050, 1054 (9th Cir. 2006).

## 8 **2. Plaintiff’s statements regarding subjective symptoms**

9 Plaintiff argues that the ALJ failed to articulate specific, clear, and convincing  
10 reasons for rejecting her subjective symptom testimony. Dkt. 12 at 8-12.

11 The ALJ’s determinations regarding a claimant’s statements about limitations  
12 “must be supported by specific, cogent reasons.” *Reddick v. Chater*, 157 F.3d 715, 722  
13 (9th Cir. 1998) (citing *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990)). In  
14 assessing a Plaintiff’s credibility, the ALJ must determine whether Plaintiff has  
15 presented objective medical evidence of an underlying impairment. If such evidence is  
16 present and there is no evidence of malingering, the ALJ can only reject plaintiff’s  
17 testimony regarding the severity of his symptoms for specific, clear and convincing  
18 reasons. *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citing *Lingenfelter v.*  
19 *Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)).

20 Plaintiff testified that she lives with her mom; her mother has multiple sclerosis  
21 and does not work. AR 48-49. She helps her mom by making coffee, tea, or something  
22 simple for a meal. AR 49. She testified that she takes medications that she finds to be  
23 helpful but she experiences side effects. AR 52-53. Specifically, she gets a once a  
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1 month injection of Mounjaro that causes nausea and exhaustion. AR 53. She stated that  
2 she spends her time laying in bed, playing with her pets, making food, running errands  
3 with her mom, watching movies and drawing. AR 54-55.

4 She testified that she does not drive because she is concerned if she was having  
5 a bad day she would try to end her life by driving into oncoming traffic or off a bridge on  
6 purpose, a therapist advised her not to drive for the same reason. AR 55. She testified  
7 that she has thoughts of ending her life in general and it prevents her from doing things  
8 like washing dishes due to handling knives. AR 56. She testified that it would prevent  
9 her from going to school two to three times a week and prevented her from going to  
10 work three or four times a month. AR 56.

11 She testified that her mental health impacts everything; if she's having really bad  
12 anxiety it impacts her sleep which turns to her being exhausted and unable to do things  
13 or being up during normal times of the day. AR 57. When her mood gets bad her  
14 depression gets to a point where she's ready to die and there's nothing she can do but  
15 sleep. AR 58. This would happen once or twice a week. *Id.*

16 She testified that she gives the animals food and water, and does her laundry. *Id.*  
17 She normally does not interact with anyone outside of her own family. *Id.* She is  
18 sometimes able to handle her own personal care but it is tied to her depression. *Id.* She  
19 frequently has severe chest pains that is exacerbated by walking, she can walk for 10  
20 minutes at a time before she needs to stop. AR 59.

21 Plaintiff stated that she can stand for maybe 20-25 minutes and then she would  
22 need to switch to sitting or lying down, due to her heart rate. AR 60. Her weight makes it  
23 difficult to complete tasks like putting away groceries due to her heart rate and her  
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1 difficulty bending to pick things up in a repeated motion. AR 60-61. She testified she can  
2 sit for about an hour at a time before she needs to get up and move for about five  
3 minutes because it is painful to be in the same position. AR 61.

4 The ALJ found that plaintiff's medically determinable impairments could  
5 reasonably be expected to cause some of the alleged symptoms to some degree but  
6 inconsistencies undermine the weight that can be given to plaintiff's symptom reports.  
7 AR 25.

8 Specifically, he found testimony regarding her mood inconsistent with behavioral  
9 treatment notes that did not reflect the consistency reported and normal mental status  
10 examinations. AR 25-26. He found that evidence that her nausea with medication  
11 ceased after her cholecystectomy to be inconsistent with the reports of the side effects  
12 of her medication. AR 26. He noted evidence that her diabetes has been managed with  
13 medication. *Id.* He also noted that her allegations regarding the side effects of  
14 Mounjaro are not supported by the record to the degree she reported. AR 27.

15 "Contradiction with the medical record is a sufficient basis for rejecting the  
16 claimant's subjective testimony." *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d  
17 1155, 1161 (9th Cir. 2008) (citing *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th  
18 Cir.1995)). But an ALJ may not reject a claimant's subjective symptom testimony "solely  
19 on a lack of objective medical evidence to fully corroborate the alleged severity of pain."  
20 *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991); *Byrnes v. Shalala*, 60 F.3d 639,  
21 641-42 (9th Cir. 1995) (applying rule to subjective complaints other than pain).

1 Treatment records cannot be cherry-picked; the ALJ must consider a particular  
2 record of treatment in light of the overall diagnostic record. *Ghanim v. Colvin*, 763 F.3d  
3 at 1164.

4 The Court has already concluded that the ALJ erroneously evaluated the  
5 treatment record (for example, in the context of the ALJ's evaluation of the  
6 persuasiveness of Dr. Wilkinson's opinion) by cherry-picking records that supported the  
7 conclusion. As far as plaintiff's mental health symptoms, the ALJ did not appear to take  
8 into account the waxing and waning nature of mental health symptoms. *See Garrison v.*  
9 *Colvin*, 759 F.3d 995, 1017 (9th Cir. 2014) (during the progression of a mental health  
10 condition, symptoms may wax and wane).

11 Regarding medication, evidence of conservative treatment successfully relieving  
12 symptoms can serve as a clear and convincing reason for discounting a plaintiff's  
13 testimony. *See* 20 C.F.R. § 404.1529(c)(3)(iv) (the effectiveness of medication and  
14 treatment are relevant to the evaluation of a claimant's alleged symptoms); *see also*  
15 *Tommasetti v. Astrue*, 553 F.3d 1035, 1040 (9th Cir. 2008) (citing *Parra v. Astrue*, 481  
16 F.3d 742, 750-51 (9th Cir. 2007)) (stating that "evidence of 'conservative treatment' is  
17 sufficient to discount a claimant's testimony regarding severity of an impairment.").

18 Here the record shows that plaintiff reported on January 23, 2023, that her  
19 chronic stomach pain, nausea, and vomiting resolved after her gallbladder removal. AR  
20 1258. Yet, this is not a clear and convincing reason for discounting her testimony about  
21 symptoms that existed *before* surgery. *See Smith v. Kijakazi*, 14 F.4th 1108, 1113 (9th  
22 Cir. 2021) ("ALJ therefore erred by disregarding all of [plaintiff's] testimony, including  
23  
24  
25

1 portion about his early-period incapacity, on the basis of inconsistencies only clearly  
2 applicable to the late-period testimony.”).

3       Regarding the inconsistencies identified relating to her diabetes and obesity,  
4 because the Court has concluded that the ALJ erred in evaluating the medical opinions,  
5 on remand, the ALJ will be required to reassess the consistency between plaintiff’s  
6 testimony and the medical record.

7       Here plaintiff described severe limitations in her mental and physical abilities.  
8 Had these limitations been included in the RFC it may have resulted in a more  
9 restrictive RFC. These errors were not harmless. *Stout v. v. Comm’r, Soc. Sec. Admin.*,  
10 454 F.3d 1050, 1054 (9th Cir. 2006).

### 11       **3. Lay witness evidence**

12       Regarding the lay witness testimony, for cases filed prior to March 27, 2017, the  
13 Court would uphold the ALJ’s decision to discount the opinion of a non-acceptable  
14 medical source, such as a friend or a family member, if the ALJ provided “reasons  
15 germane to each witness for doing so.” *Turner v. Commissioner of Social Sec.*, 613  
16 F.3d 1217, 1224 (9th Cir. 2010) (citing *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001);  
17 20 C.F.R. § 404.1502.

18       For applications filed on or after March 27, 2017, such as this one, an ALJ is “not  
19 required to articulate” how he or she evaluated evidence from non-medical sources  
20 such as educational personnel, public and private social welfare agency personnel, and  
21 other lay witnesses. 20 C.F.R. § 404.1502(e).

22       The ALJ was not required to explain his reasoning for rejecting plaintiff’s mother’s  
23 testimony. *Hudnall v. Dudek*, 23-3727, 2025 WL 729701 \*3 (9th Cir. Mar. 7, 2025).

CONCLUSION

Based on the foregoing discussion, the Court concludes the ALJ improperly determined plaintiff to be not disabled. Therefore, the ALJ's decision is reversed and remanded for further administrative proceedings.

Dated this 27th day of March, 2025



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Theresa L. Fricke  
United States Magistrate Judge